

HOUSE BILL 177

**48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008**

INTRODUCED BY

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AN ACT

RELATING TO THE PRACTICE OF MEDICINE; PROVIDING FOR SUMMARY  
SUSPENSION OR RESTRICTION OF LICENSES; AMENDING REVIEW  
ORGANIZATION REPORTING REQUIREMENTS; PROVIDING FOR ADDITIONAL  
ADMINISTRATIVE FEES; PROVIDING THE NEW MEXICO MEDICAL BOARD THE  
POWER TO SUBPOENA REVIEW ORGANIZATIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 41-9-5 NMSA 1978 (being Laws 1979,  
Chapter 169, Section 5) is amended to read:

"41-9-5. CONFIDENTIALITY OF RECORDS OF REVIEW  
ORGANIZATION.--All data and information acquired by a review  
organization in the exercise of its duties and functions shall  
be held in confidence and, unless subpoenaed pursuant to  
Subsection B of Section 61-6-23 NMSA 1978, shall not be  
disclosed to anyone except to the extent necessary to carry out

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1 one or more of the purposes of the review organization or in a  
2 judicial appeal from the action of [a] the review organization.  
3 No person described in Section [~~4 of the Review Organization~~  
4 ~~Immunity Act~~] 41-9-4 NMSA 1978 shall disclose what transpired at  
5 a meeting of a review organization except to the extent  
6 necessary to carry out one or more of the purposes of [a] the  
7 review organization or in a judicial appeal from the action of  
8 [a] the review organization. Information, documents or records  
9 otherwise available from original sources shall not be immune  
10 from discovery or use in any civil action merely because they  
11 were presented during proceedings of a review organization, nor  
12 shall any person who testified before a review organization or  
13 who is a member of a review organization be prevented from  
14 testifying as to matters within [~~his~~] the person's knowledge,  
15 but a witness cannot be asked about opinions formed by [~~him~~] the  
16 witness as a result of the review organization's hearings."

17 Section 2. A new section of the Medical Practice Act,  
18 Section 61-6-15.1 NMSA 1978, is enacted to read:

19 "61-6-15.1. [NEW MATERIAL] SUMMARY SUSPENSION OR  
20 RESTRICTION OF LICENSE.--

21 A. The board may summarily suspend or restrict a  
22 license issued by the board without a hearing, simultaneously  
23 with or at any time after the initiation of proceedings for a  
24 hearing provided under the Uniform Licensing Act, if the board  
25 finds that evidence in its possession indicates that the

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1 licensee:

2 (1) poses a clear and immediate danger to the  
3 public health and safety if the licensee continues to practice;

4 (2) has been adjudged mentally incompetent by  
5 a final order or adjudication by a court of competent  
6 jurisdiction; or

7 (3) has pled guilty to or been found guilty of  
8 any offense related to the practice of medicine or for any  
9 violent criminal offense in this state or a substantially  
10 equivalent criminal offense in another jurisdiction.

11 B. A licensee is not required to comply with a  
12 summary action until service has been made or the licensee has  
13 actual knowledge of the order, whichever occurs first.

14 C. A person whose license is suspended or restricted  
15 under this section is entitled to a hearing by the board  
16 pursuant to the Uniform Licensing Act within fifteen days from  
17 the date the licensee requests a hearing."

18 Section 3. Section 61-6-16 NMSA 1978 (being Laws 1989,  
19 Chapter 269, Section 12, as amended) is amended to read:

20 "61-6-16. REPORTING OF SETTLEMENTS AND JUDGMENTS,  
21 PROFESSIONAL REVIEW ACTIONS AND ACCEPTANCE OF SURRENDERED  
22 LICENSE--IMMUNITY FROM CIVIL DAMAGES--PENALTY.--

23 A. All entities that make payments under a policy of  
24 insurance, self-insurance or otherwise in settlement or  
25 satisfaction of a judgment in a medical malpractice action or

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1 claim, hospitals, health care entities and professional review  
2 bodies shall report to the board all payments relating to  
3 malpractice actions or claims arising in New Mexico that involve  
4 a licensee, all appropriate professional review actions of  
5 licensees and the acceptance or surrender of clinical privileges  
6 by a licensee while under investigation or in lieu of an  
7 investigation. For the purposes of this section, the meaning of  
8 these terms shall be as contained in Section 431 of the federal  
9 Health Care Quality Improvement Act of 1986, 42 USCA Section  
10 11151.

11 B. The hospitals required to report under this  
12 section, health care entities or professional review bodies that  
13 provide such information in good faith shall not be subject to  
14 suit for civil damages as a result of providing the information.

15 C. A hospital, health care entity or professional  
16 review body failing to comply with the reporting requirements  
17 provided in this section shall be subject to civil penalty not  
18 to exceed ten thousand dollars (\$10,000)."

19 Section 4. Section 61-6-19 NMSA 1978 (being Laws 1989,  
20 Chapter 269, Section 15, as amended) is amended to read:

21 "61-6-19. FEES.--

22 A. The board shall impose the following fees:

23 (1) an application fee not to exceed four  
24 hundred dollars (\$400) for licensure by endorsement as provided  
25 in Section 61-6-13 NMSA 1978;

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1                   (2) an application fee not to exceed four  
2 hundred dollars (\$400) for licensure by examination as provided  
3 in Section 61-6-11 NMSA 1978;

4                   (3) a triennial renewal fee not to exceed four  
5 hundred fifty dollars (\$450);

6                   (4) a fee of twenty-five dollars (\$25.00) for  
7 placing a physician's license or a physician assistant's  
8 license on inactive status;

9                   (5) a late fee not to exceed one hundred  
10 dollars (\$100) for physicians who renew their license within  
11 forty-five days after the required renewal date;

12                   (6) a late fee not to exceed two hundred  
13 dollars (\$200) for physicians who renew their licenses between  
14 forty-six and ninety days after the required renewal date;

15                   (7) a reinstatement fee not to exceed six  
16 hundred dollars (\$600) for reinstatement of a revoked,  
17 suspended or inactive license;

18                   (8) a reasonable administrative fee for  
19 verification and duplication of license or registration and  
20 copying of records;

21                   (9) a reasonable publication fee for the  
22 purchase of a publication containing the names of all  
23 practitioners licensed under the Medical Practice Act;

24                   (10) an impaired physician fee not to exceed  
25 one hundred fifty dollars (\$150) for a three-year period;

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1 (11) an interim license fee not to exceed one  
2 hundred dollars (\$100);

3 (12) a temporary license fee not to exceed one  
4 hundred dollars (\$100);

5 (13) a postgraduate training license fee not  
6 to exceed fifty dollars (\$50.00) annually;

7 (14) an application fee not to exceed one  
8 hundred fifty dollars (\$150) for physician assistants applying  
9 for initial licensure;

10 (15) a licensure fee not to exceed one hundred  
11 fifty dollars (\$150) for physician assistants biennial  
12 licensing and registration of supervising licensed physician;

13 (16) a late fee not to exceed fifty dollars  
14 (\$50.00) for physician assistants who renew their licensure  
15 within forty-five days after the required renewal date;

16 (17) a late fee not to exceed seventy-five  
17 dollars (\$75.00) for physician assistants who renew their  
18 licensure between forty-six and ninety days after the required  
19 renewal date;

20 (18) a reinstatement fee not to exceed one  
21 hundred dollars (\$100) for physician assistants who reinstate  
22 an expired license;

23 (19) a processing fee not to exceed fifty  
24 dollars (\$50.00) for each change of a supervising licensed  
25 physician for a physician assistant;

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1 (20) a fee not to exceed three hundred dollars  
2 (\$300) annually for a physician supervising a clinical  
3 pharmacist; [~~and~~]

4 (21) an application and renewal fee for a  
5 telemedicine license not to exceed four hundred dollars (\$400);

6 (22) a reasonable administrative fee, not to  
7 exceed the current cost of application for a license, that may  
8 be charged for reprocessing applications and renewals that  
9 include minor but significant errors and that would otherwise  
10 be subject to investigation and possible disciplinary action;  
11 and

12 (23) a reasonable fee as established by the  
13 department of public safety for nationwide and statewide  
14 criminal history screening of applicants and licensees.

15 B. All fees are nonrefundable and shall be used by  
16 the board to carry out its duties efficiently."

17 Section 5. Section 61-6-23 NMSA 1978 (being Laws 1989,  
18 Chapter 269, Section 19, as amended) is amended to read:

19 "61-6-23. INVESTIGATION--SUBPOENA.--

20 A. To investigate a complaint against a licensee,  
21 the board may issue investigative subpoenas prior to the  
22 issuance of a notice of contemplated action.

23 B. A review organization, acting pursuant to the  
24 Review Organization Immunity Act, shall comply with an  
25 investigative subpoena issued pursuant to this section, but

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1 only after the review organization has taken action against a  
2 licensee. When a review organization provides records to the  
3 board:

4 (1) the records are deemed confidential and  
5 are not public records for the purposes of the Inspection of  
6 Public Records Act; and

7 (2) the review organization's compliance with  
8 the investigative subpoena shall not be deemed a waiver of any  
9 provision of the Review Organization Immunity Act by the review  
10 organization.

11 C. If a review organization provides peer review  
12 records that a third party subsequently subpoenas from the  
13 board, the board shall give timely notice of the subpoena to  
14 the review organization that produced the records. The review  
15 organization has standing as a third-party intervenor to oppose  
16 production in an action brought by other parties that request  
17 the board to produce records that the review organization has  
18 produced for the board.

19 D. The board may not compel a peer review member or  
20 an expert who participates in a peer review process to  
21 participate in a board investigation or action resulting from  
22 the board's receipt of the peer review documents.

23 E. The only documents that must be disclosed in  
24 response to an investigative subpoena by the board are those  
25 related to the review organization's action that had been the

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1 subject of a report to the board."

2 Section 6. Section 61-6-24 NMSA 1978 (being Laws 1989,  
3 Chapter 269, Section 20) is amended to read:

4 "61-6-24. LIMITATIONS ON ACTIONS.--

5 A. No action that would have any of the effects  
6 specified in Sections [~~61-6-8 and~~] 61-6-15 and 61-6-15.1 NMSA  
7 1978 may be initiated by the board later than two years after  
8 it is brought to the board's attention.

9 B. The time limitation contained in Subsection A of  
10 this section shall be tolled by any civil or criminal  
11 litigation in which the licensee or applicant is a party  
12 arising substantially from the same facts, conduct, transaction  
13 or transactions [~~which~~] that would be the basis of the board's  
14 decision."

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